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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of	)	
Sequoyah Fuels Corporation	)	
and General Atomics	)	Docket No. 40-8027-EA
	)	Source Material License No.
	)	SUB-1010
(Gore, Oklahoma, Site	)	
Decontamination and	)	ASLBP No. 94-684-01-EA
Decommissioning Funding)	)	April 15, 1994

CHEROKEE NATION'S COMBINED RESPONSE TO SEQUOYAH FUELS CORPORATION'S ANSWER IN OPPOSITION AND N.R.C. STAFF'S RESPONSE TO CHEROKEE NATION'S APPLICATION FOR ORDER ALLOWING INTERVENTION

COMES NOW the Cherokee Nation and submits this response to Sequoyah Fuels Corporation's Answer in Opposition and N.R.C. staff's response to Cherokee Nation's Application for Order Allowing Intervention.

Sequoyah Fuels calls into question the ownership of the bed of the Arkansas River by the Cherokee Nation. The N.R.C. staff is concerned that the Cherokee Nation's petition (1) has not adequately demonstrated an injury in fact; and (2) failed to allege adequate facts demonstrating that the result of these proceedings will adversely impact its interest.

In 1970 the United States Supreme Court ruled that the Cherokee, Choctaw and Chickasaw Nations uniquely hold title to the bed and banks of a navigable waterway, the Arkansas River as the

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same passes through the historical domains of those tribes. Choctaw Nation v. Oklahoma, 397 U.S. 620 (1970) and Cherokee Nation v. State of Oklahoma, 461 F.2d 674 (1972). The bed and banks of the Arkansas River have been held in trust by the United States since 1906 pursuant to 34 Stat., 136. There is no doubt whatsoever that these tribes are the beneficial owners of ninety-six (96) miles of Arkansas riverbed including that portion adjacent to Sequoyah Fuels plant site. The Cherokee Nation is the exclusive owner of the north bank of the river within 1/2 mile south of this plant at the point of its confluence with the Illinois River. Choctaw Nation v. Cherokee Nation, 393 F.Supp. 224, 246 (E.D. Okla. 1975).

The concern of the tribe that there is contamination of the bed and banks of the Arkansas is not speculative. Attached hereto is a letter from Curtis Canard, Cherokee Nation Office of Environmental Services dated September 24, 1992, explaining, inter alia, the results of EPA ground water monitoring tests on riverbed property at the confluence of the Arkansas and Illinois Rivers. These tests show significant levels of heavy metals, including barium, chromium, cobalt, copper, lead, vanadium, aluminum, nickel, beryllium, and zinc. Some contaminate levels are in excess of Superfund criteria for contamination and others exceed National Primary Drinking Water Standards. The test wells are located outside of the Sequoyah Fuels Corporation corporate boundary but within the near by riverbed. (See map attached) At least four of the wells run along the Arkansas riverbed. Recently completed cadastral surveys conducted by the Bureau of Land Management establish that the Cherokee Nation owns much of the riverbed in

this immediate area. Unfortunately mapping of those surveys is not yet complete. Nevertheless, the natural flow of ground water in this area is to the west toward tribal property.[1]

The Cherokee Nation by virtue of its property interests in the area, should be permitted to intervene in these proceedings regardless of its representational standing. Georgia Power & Light, LBP-91-33, 34 NRC 138 (1941). Since the Cherokee Nation has property interests in the area which have likely been adversely effected by the operation of the Sequoyah Fuels Plant, the tribe has standing to intervene on its own as a tribe. Vermont Yankee Nuclear Power Station, LBP-87-7, 25 NRC 116, 118 (1987).

The Cherokee Nation's ownership of this portion of the Arkansas riverbed is established. If Sequoyah Fuels Corporation does not do an adequate clean-up of the site and nearby tribal property it will remain contaminated. Groundwater run-off will continue to contaminate tribal property in the future. The health and care of tribal members who use the riverbed for hunting and fishing will be affected. The tribe will not be able to develop the property for its economic benefit if it remains contaminated. The tribe should be allowed to intervene to protect the health and safety of its members and its economic development interests in the property. The tribe unconditionally supports the October 15, 1993, order issued to Sequoyah Fuels Corporation and General Atomics. The tribe asserts that with this additional filing that it has

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[1] Sequoyah Fuels Corporation itself admits that "groundwater flows in a generally westward direction." See affidavit of John Dietrich dated December 3, 1993, paragraph 8, attached to Sequoyah Fuels Corporation's Answer in Opposition to NACE's Motion to Intervene, dated December 6, 1993.

demonstrated a nexus between the possible outcome of these proceedings and its interests.

The Cherokee Nation adopts the contentions of NACE that; (1) the N.R.C. has enforcement authority over General Atomics and (2) guaranteed decommissioning financing by General Atomics is required by N.R.C. regulations and is necessary to provide adequate protection to public health and safety, including the tribe's members, as well as the property interest of the tribe.

The tribe is concerned about the adequacy of funding for decommissioning efforts. The concerns of the tribe are the same as those described in the order from which Sequoyah Fuels now appeals. If decommissioning funding is inadequate, the Cherokee Nation will suffer an injury in fact.

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CERTIFICATE OF SERVICE

I, James G. Wilcoxen, hereby certify that on the 19 day of May, 1994, copies of the foregoing Response was served by first class mail, on the following:

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Chairman
The Atomic Safety & Licensing Board
U. S. Nuclear Regulatory commission
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ATTN: Docketing and Services Branch
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James G. Wilcoxen

CHEROKEE NATION
P.O. Box 948 • Tahlequah, Okla. 74465 • (918)456-0671

Wilma P. Mankiller
Principal Chief

John A. Ketcher
Deputy Chief

September 24, 1992

Mr. Jim Wilcoxen
112 N. 5th Street
Muskogee, Ok 74401

RE: GORE RIVERBED

Dear Mr. Wilcoxen;

The sampling process for the Site Investigation at Gore Riverbed is complete. The EPA Contract Laboratory Program has returned the sampling analysis data. Analysis data for the soil and sediment samples indicate no significant concentrations of contamination for either inorganic or organic. However, sampling analysis data for the groundwater (monitoring wells) revealed heavy metal contamination (inorganic) in five of the ten wells. Heavy metal constituents in these wells met the EPA Superfund criteria for contamination with background sample above the Contract Required Detection Limit (CRDL) and hit samples three times the background sample results. Although these contaminants are considered low concentration, some exceed the National Primary Drinking Water Standards (1974) and Proposed National Drinking Water Standards. Contaminants include barium, chromium, cobalt, copper, lead, vanadium, aluminum, nickel, beryllium, and zinc.

The following tables are a summary of the EPA/CLP data. Also included is a map showing the location of the monitoring wells where groundwater samples were collected. The approximate depth to groundwater for these wells was eight to twenty feet. Groundwater samples were collected in June of 1992.

Sincerely,

Curtis Canard,
Office of Environmental Services

Enclosure

CC/er

Site Name:
Date:

GENERAL INFORMATION (continued)

SITE SKETCH

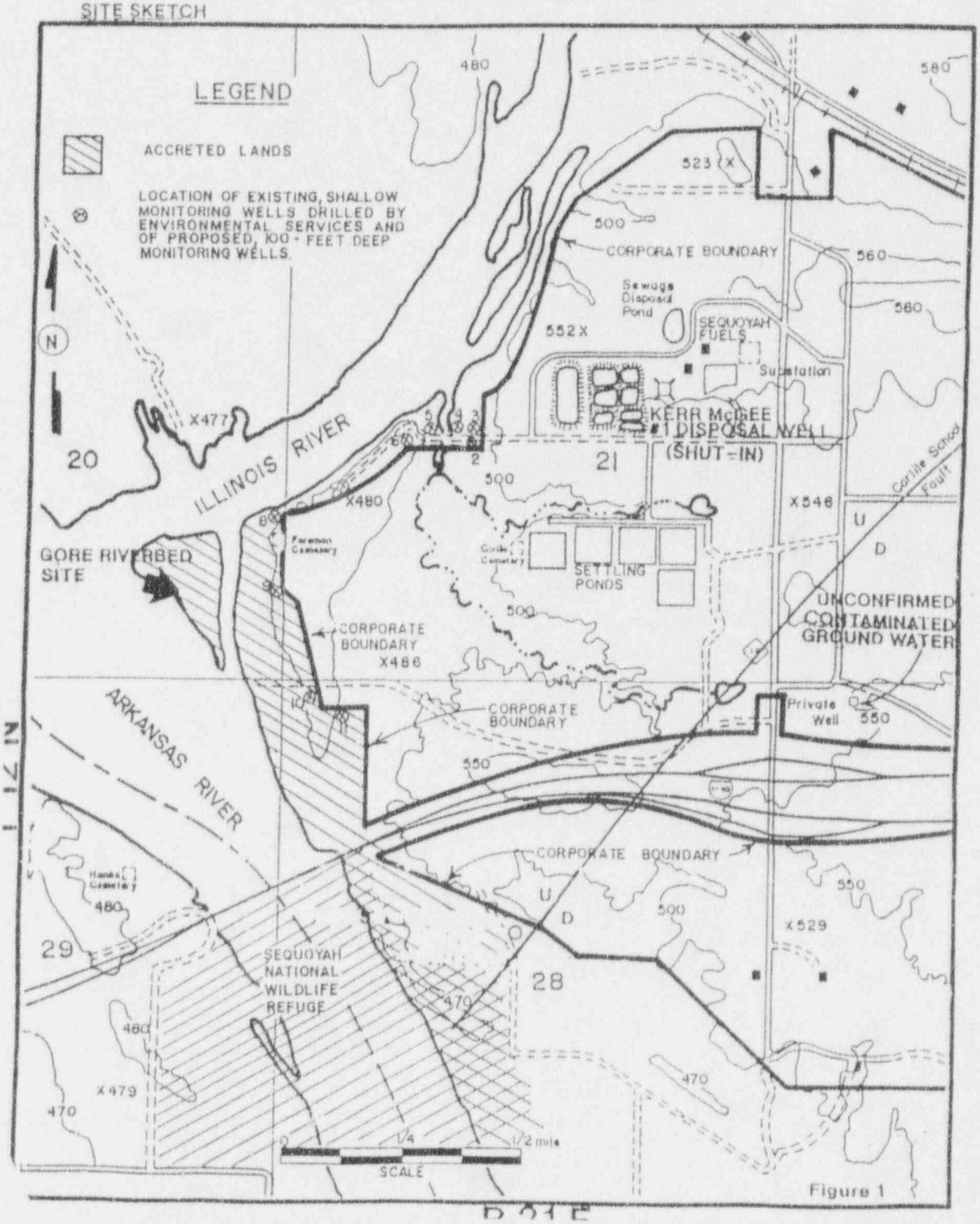

Figure 1

SURFACE SOILS (0-6 INCHES) INORGANIC ANALYTIC RESULTS

ANALYTE	CONCENTRATION (MG/KG)												
Contaminant	Station 1 (Background)	CRDL	Station 5	Station 6	Station 7	Station 8	Station 9	Station 10	Station 11	Station 12	Station 13	Station 14	Station 15
Aluminum	16,400	40	27,600	25,400	22,100	14,500	22,300	8,530	7,500	7,350	4,910	8,070	8,300
Antimony	ND	12	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Arsenic	4.1	2	9.9	[illegible]	ND	3.0	4.7	5.1	ND	ND	ND	ND	ND
Barium	110	40	180	458	70	52	76	56	86	179	85	57	57
Beryllium	1	1	1	1	1	ND	1	ND	ND	ND	ND	ND	ND
Cadmium	ND	1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Calcium	1,530	1,000	2,260	2,360	2,570	250	802	1,280	990	2,780	923	613	613
Chromium	29	2	41	40	29	23	19	13	11	10	7	12	12
Cobalt	7	10	12	11	7	3	ND	4	3	3	ND	ND	ND
Copper	7	5	22	9	8	3	6	3	4	11	4	ND	ND
Iron	14,100	20	23,400	21,800	13,000	12,800	28,600	9,730	6,270	6,940	5,400	5,300	5,300
Lead	23	1	22	15	11	8.9	8.3	7.1	7.6	14	5.3	7.1	7.1
Magnesium	1,390	1,000	2,300	2,560	2,220	953	2,040	815	1,110	1,520	,003	651	651
Manganese	736	3	690	1,150	180	115	169	269	285	459	270	219	219
Mercury	ND	0.1	ND	ND	ND	ND	ND	ND	ND	0.2	ND	ND	ND
Nickel	12	8	29	17	20	ND	ND	3	3	5	3	ND	ND
Potassium	2,180	1,000	3,800	3,640	2,930	1,290	2,080	1,110	1,530	1,840	903	931	931
Selenium	ND	1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Silver	ND	2	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Sodium	82	1,000	229	228	248	90	251	93	85	82	68	88	88
Thallium	ND	2	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Vanadium	30	10	53	46	34	29	38	19	16	14	10	14	14
Zinc	48	4	89	61	41	21	21	25	17	38	17	16	16
Cyanide	ND	5	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND

[illegible] Background ≥ CRDL, Hit 3 times background

SURFACE SEDIMENTS (0-6 INCHES) INORGANIC ANALYTIC RESULTS

ANALYTE	CONCENTRATION (MG/KG)													
Contaminant	Station 1 (Background)	CRDL	Station 3	Station 4	Station 5	Station 6	Station 7	Station 8	Station 9	Station 10	Station 11	Station 12	Station 13	Station 14
Aluminum	13,600	40	17,800	20,400	8,180	14,900	29,100	20,200	17,800	19,100	14,800	12,500	7,450	7,160
Antimony	ND	12	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Arsenic	ND	2	3.7	3.2	5.7	ND	3.6	ND	ND	ND	ND	ND	ND	ND
Barium	75	40	100	107	50	93	186	117	133	115	110	88	53	51
Beryllium	1	1	1	1	1	1	1	1	1	1	1	1	ND	ND
Cadmium	ND	1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Calcium	1,330	1,000	1,450	1,020	761	1,660	1,960	1,650	1,970	1,900	1,820	1,740	2,320	2,130
Chromium	27	2	26	34	27	24	43	31	25	29	22	19	11	13
Cobalt	5	10	6	6	4	5	9	6	6	6	6	4	4	ND
Copper	5	5	7	6	3	6	10	8	7	8	7	5	4	ND
Iron	10,500	20	11,200	13,400	13,200	10,800	17,700	13,500	12,700	13,600	12,700	10,600	6,890	6,810
Lead	7.5	1	11.6	8.9	8.1	11.2	14.7	14.0	11.8	9.4	11.6	8.0	5.5	4.7
Magnesium	1,210	1,000	1,380	1,760	623	1,320	2,120	1,540	2,510	2,460	1,980	2,650	2,040	1,730
Manganese	186	3	248	374	192	313	2,860	271	600	371	444	258	178	237
Mercury	ND	0.1	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Nickel	9	8	10	11	ND	7	13	10	8	9	8	5	3	ND
Potassium	1,990	1,000	2,480	3,130	1,140	2,200	3,950	2,700	3,010	3,370	2,340	2,190	1,420	1,380
Selenium	ND	1	0.4	ND	0.4	ND	ND	0.6	ND	ND	ND	0.4	0.5	0.6
Silver	ND	2	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Sodium	175	1,000	141	158	100	122	186	134	180	171	125	155	149	157
Thallium	ND	2	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Vanadium	26	10	31	36	21	28	50	36	33	34	28	24	15	15
Zinc	32	4	41	41	24	40	57	49	43	49	37	39	28	25
Cyanide	ND	5	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND

Background $\geq$ CRDL, Hit 3 times background

GROUND WATER INORGANIC ANALYTIC RESULTS

ANALYTE	CONCENTRATION (UG/L)											
Contaminant	Station 1 (Background)	CRDL	Station 2	Station 3	Station 4	Station 5	Station 6	Station 7	Station 8	Station 9	Station 10	Station 11
Aluminum	85200	200	82,300	67,300	908,000	299,000	128,000	327,000	13,400	12°,000	313,000	402,000
Antimony	ND	60	ND	ND	399	106	ND	100	ND	ND	104	132
Arsenic	ND	10	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Barium	835	200	773	427	2,910	1,380	861	3,160	1,770	1,770	3530	2,750
Beryllium	7	5	7	5	58	23	58	16	9	8	28	23
Cadmium	ND	5	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Calcium	31,300	5,000	34,900	49,700	140,000	97,200	28,400	97,900	143,000	73,400	120,000	134,000
Chromium	100	10	90	65	1,790	554	194	321	165	162	335	563
Cobalt	45B	50	20	ND	*556	*153	40	104	56	43	*240	*162
Copper	45	25	29	26	680	178	43	136	108	71	208	232
Iron	85,900	100	78,100	67,100	1,510,000	433,000	110,000	308,000	138,000	148,000	377,000	454,000
Lead	64	5	50	32	367	50	28	78	72	46	177	174
Magnesium	13,800	5,000	18,600	38,500	261,000	74,600	19,900	66,500	67,600	44,000	60,800	120,000
Manganese	3,510	15	1,780	1,450	13,500	5,070	3,900	11,700	3,220	3,130	32,700	8,670
Mercury	ND	0.2	ND	ND	0.46	ND	ND	0.28	ND	ND	0.33	0.41
Nickel	78	40	48	39	1,760	433	146	271	115	114	422	399
Potassium	13,900	5,000	15,900	11,700	73,100	34,700	15,700	31,900	27,100	19,300	33,300	43,300
Selenium	ND	5	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Silver	ND	10	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Sodium	17,300	5,000	6,240	185,000	356,000	330,000	13,100	16,200	14,000	19,300	16,900	13,500
Thallium	ND	10	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND
Vanadium	115	50	124	84	1,560	521	195	417	225	195	519	641
Zinc	340	20	253	220	6,300	1,540	334	985	444	422	991	1,300
Cyanide	ND	10	ND	ND	ND	ND	ND	ND	ND	ND	ND	ND

Background ≥ CRDL, Hit 3 times background

* Background flagged B (> IDL < CRDL), Hit 3 times background